

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NICHOLAS SCHMIDT, as Personal Representative
of the Estate of Jack Olson Schmidt, deceased,

Case No.
Hon. Carol Kuhnke
L.C. No. 20-000099-NO

Plaintiff,

-vs-

BRYAN SCOTT BUTLER, UPS GROUND
FREIGHT, INC. and/or UNITED PARCEL
SERVICE, INC.

Defendants.

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NOTICE OF REMOVAL

To: **THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT
COURT; EASTERN DISTRICT OF MICHIGAN, SOUTHERN
DIVISION**

Defendants, Bryan Scott Butler, UPS Ground Freight, Inc. and United Parcel Service, Inc., by and through their attorneys, Harvey Kruse, P.C., hereby provide

their notice to have the above action removed from state court to this District Court for the Eastern District of Michigan, Southern Division, stating as follows:

THE STATE COURT ACTION

1. An action involving the above parties is pending in the Washtenaw County Circuit Court for the State of Michigan, Case No. 20-000099-NI.

2. This state court case was filed against Bryan Scott Butler, UPS Ground Freight, Inc. (“UPS Freight”) and/or United Parcel Service, Inc. (“UPS”) (collectively, “Defendants”) (**Exhibit 1**, Complaint).

3. In his January 21, 2020 Complaint, Plaintiff asserts claims for pecuniary and non-pecuniary damages, as well as all damages allowed for by the Wrongful Death Act, MCL 600.2922, purportedly arising out of a January 16, 2019 motor vehicle accident wherein a motor vehicle driven by Plaintiff’s decedent, Jack Olson Schmidt, struck a trailer being towed by UPS Freight driver Bryan Scott Butler on EB I-94 in icy road conditions near Lima Township, Washtenaw County, Michigan (**Exhibit 1**, ¶ 8-10).

FEDERAL DIVERSITY JURISDICTION

4. This is a “civil action” as defined by the removal statute, 28 USC § 1441. Removal is proper here because of diversity of citizenship of the parties.

5. This action involves a controversy between citizens of different states under 28 USC § 1332(a)(1) and 28 USC § 1332(c)(1), as shown below:

a. Plaintiff is at the time of filing this Notice, and was at the time the state court action was filed, a resident of the City of Ypsilanti, County of Washtenaw, State of Michigan (**Exhibit 1**, ¶ 2). Plaintiff's decedent was at the time of the subject accident a resident of the City of Chelsea, County of Washtenaw, State of Michigan (**Exhibit 1**, ¶ 1). Plaintiff is therefore a citizen of Michigan.

b. Defendant UPS¹ is at the time of the filing this Notice, and was at the time the state court action was filed, an Ohio corporation with its principal place of business located at 55 Glenlake Parkway, N.E., Atlanta, Georgia 30328 (**Exhibit 1**, ¶ 5; **Exhibit 2**, Certificate of Amendment of Articles of Incorporation). UPS is therefore a citizen of Ohio and Georgia.

c. Defendant UPS Freight is at the time of the filing this Notice, and was at the time of state court action was filed, a Virginia corporation with its principal place of business located at 100 Semmes Avenue, Richmond, Virginia 23224 (**Exhibit 1**, ¶ 4; **Exhibit 3**, 2019 Annual Report). UPS Freight is therefore a citizen of Virginia.

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d. Defendant Bryan Scott Butler is at the time of filing this Notice, and was at the time the state court action was filed, a resident of the City of Schererville, County of Lake, State of Indiana. (Exhibit 1, ¶ 3). He is therefore a citizen of Indiana.

6. Though Plaintiff does not plead a specific damages dollar amount, the scope and severity of his injury and damages claims, listed in Paragraph 14 of his Complaint, show that damages here clearly exceed \$75,000, exclusive of interest and costs:

- a. Multiple painful blunt force injuries to and about the head, neck, chest and abdomen including but not limited to rupture of the thoracic aorta, laceration of the heart, skull fractures, fractures and complete transection of the second and twelfth thoracic vertebrae, lacerating of the spleen, liver and colon, bilateral adrenal hemorrhage, hemorrhage of the pancreas, pulmonary contusions and lacerations, multiple rib fractures, pelvic fractures, intracranial neoplasm and sequelae ultimately resulting in death;
- b. Multiple painful injuries to and about the left lower extremities including but not limited to fractures of the left tibia and fibula with traumatic amputation of the left lower leg, fractures of the left humerus, radius and ulna fractures and fractures of the left mandible;
- c. Multiple painful injuries to the head, neck, back and entire spine and sequelae;
- d. Multiple painful injuries to and about the entire musculo-skeletal soft tissue and nerve system and sequelae;
- e. Multiple internal injuries and sequelae;

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¹ Although named a Defendant to this lawsuit, UPS is not a proper party to this lawsuit; UPS Freight is the properly named Defendant. A motion to dismiss UPS will be forthcoming.

- f. Any and all other manners of internal and external injuries;
- g. Conscious pain, suffering, discomfort, disability with extreme physical and emotional suffering and awareness of impending doom;
- h. Loss of the natural enjoyments of life;
- i. Aggravation of pre-existing conditions;
- j. Loss of wages and/or earning capacity; and
- k. Any and all damages allowed for by the Wrongful Death Act found at MCL 600.2922. (**Exhibit 1**, ¶ 14).

7. As such, this Court has original subject matter jurisdiction over this action pursuant to 28 USC § 1332(a)(1) and 28 USC § 1332(c)(1), because of the diversity of the parties.

PROCEDURAL REQUIREMENTS - 28 USC § 1446

8. The Complaint in this case was served on UPS on February 24, 2020. (**Exhibit 4**, Notice of Service of Process).

9. The Complaint in this case was served on UPS Freight on February 24, 2020. (**Exhibit 5**, Notice of Service of Process).

10. The Complaint in this case was served on Mr. Butler, on February 26, 2020. (**Exhibit 6**, Plaintiff's counsel's cover letter with USPS tracking number).

11. As required under 28 USC § 1446(b), this Notice of Removal is filed within 30 days of Defendants' receipt of the initial pleading setting forth the claim on which this action is based.

12. As required under 28 USC § 1446(d), Defendants are providing written notice to all adverse parties concerning their efforts to remove this case from state court.

13. As required under 28 USC § 1446(d), a copy of this Notice of Removal is being filed with the Washtenaw County Circuit Court.

14. As required under 28 USC § 1446(a), the Complaint and its proofs of service are attached herein, and no additional “process, pleadings, [or] orders” have been served upon these Defendants in this action. (**Exhibits 1, 4-6**).

15. Defendants have not filed Answers to the Complaint in the state court and have taken no action whatsoever to actively defend themselves in the state court or otherwise demonstrate a positive intent to litigate this case in that forum.

Respectfully submitted,
HARVEY KRUSE, P.C.

/s/ John R. Prew
John R. Prew (P41891)
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1050 Wilshire Drive, Suite 320
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Dated: March 16, 2020

PROOF OF SERVICE

I declare that on March 16, 2020, I served copies of the within pleadings upon all attorneys of record via ECF.

/s/ Carolyn R. Urbanik
Carolyn R. Urbanik